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APPLICATION NO. 08/333,589	FILING DATE 09/25/95	FIRST NAMED INVENTOR PALLEY	ATTORNEY DOCKET NO. 38-3744
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MELANIE L BROWN
ALLIEDSIGNAL INC LAW DEPT
P O BOX 31
PETERSBURG VA 23804

C2M1/0227

EXAMINER KOPSIDAS, N

ART UNIT 3207	PAPER NUMBER
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DATE MAILED: 02/27/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/533,589

Applicant(s)

Palley et al.

Examiner

Niki M. Kopsidas

Group Art Unit

3207



☒ Responsive to communication(s) filed on Nov 15, 1996

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-117 is/are pending in the application.

Of the above, claim(s) 7, 37-73, and 77-117 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-6, 8-36, and 74-76 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Sep 25, 1995 is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 6, 7, 10, 12, 15

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Election/Restriction

1. Applicant's election of Group I, Species II in Paper No. 14 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). A statement that generic claims exist in the application, is not considered to be a traversal of the restriction requirement.
2. Claims 7, 37-73 and 77-117 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected invention and/or species. Election was made **without** traverse in Paper No. 14 (see paragraph 1, above). Note, claim 37 does not read on Species II, claim 37 and all claims dependent thereon, directly or indirectly, appear to be drawn to a different species, such as Species III and VII. Therefore, claims 37-58 are withdrawn from further consideration.

Drawings

3. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.
4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the rigid support structure of Species II must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

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Specification

5. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. 112, first paragraph, as the support structure of Species II has not been described adequately. The relationship between the three bands and the support structure is unclear. Also, the specific shape of the Species II support structure has not been described.

Claim Rejections - 35 USC § 112

7. Claims 8-11 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The rigid support structure of Species II has not been adequately described. The structural relationship between the rigid support structure and the inner band of Species II has not been clearly set forth.

8. Claims 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The structure of the band of the rigid support frame is unclear. From the drawings and specification the support structure does not appear to have a band or be in the shape of ^aband. Why is it considered to be a band?

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Double Patenting

9. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 12-32, 34-36 and 74-76 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 5,545,455 (Prevorsek et al.) in view of Lewis (U.S. 0,674,009). Prevorsek et al. discloses the claimed device except for the specific structure of the container, although, Prevorsek et al. does disclose that the patented invention can be used for containers and other conventional purposes. Lewis discloses that it is known in the art to construct a container from three separate telescoping bands of material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the invention of Prevorsek et

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al. in the form of the container of Lewis, in order to make a blast resistant container which is easy to assemble.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-6 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Lewis (U.S. 0,674,009). The term "band" is defined in the *Webster's II New Riverside University Dictionary* as "a thin strip of flexible material for encircling and binding on object or for holding several objects together". In view of this definition elements A, B and C of Lewis are considered to be bands. Element C is the first band, element B is the second band and element A is the third band. Each wall of the completed container has a thickness "substantially equivalent" to the sum thickness of two of the bands. To the degree applicant's bands are considered "substantially polygonal" in cross section, the bands of Lewis are considered "substantially polygonal" in cross section. Both bands B and C comprise a plurality of substantially rectangular surfaces in series, which are nested within another band.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject

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matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. To the degree the claims are understood in view of the rejections under 35 U.S.C. 112 above, claims 8, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Rosenbloom, Jr. et al. (U.S. 4,290,468). Lewis discloses the claimed device except for rigid support frame. Rosenbloom, Jr. et al. discloses that it is known in the art to provide a rigid support frame within an inner sleeve. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Lewis with a rigid support frame as taught by Rosenbloom, Jr. et al., in order to increase the strength of and provide additional support for the container. Rosenbloom, Jr. et al. discloses that the rigid support frame can be made of metal.

15. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Rosenbloom, Jr. et al. as applied to claim 9 above, and further in view of Hall (U.S. 4,216,803). The modified container of Lewis discloses the claimed device except for the support structure being wrapped with glass or carbon fibers. Hall discloses that it is known in the art to wrap a metallic band with glass fibers (see col. 2 ln. 16-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Lewis using glass fibers to wrap the metallic band as taught by Hall, in order to strengthen the metallic band without significantly increasing the overall weight of the rigid support structure.

16. Claims 12-32, 34-36 and 74-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Prevorsek et al. (U.S. 5,545,455). Lewis discloses the claimed device except for the band material. Prevorsek et al. discloses that it is known in the art to make a container from layers comprising networks of fibers. It would have been obvious to one having ordinary skill in the art at the

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time the invention was made to provide the container of Lewis with the fibrous material of Prevorsek et al., in order to make a container with improved penetration resistance. The fibers of Prevorsek et al. are considered to be "substantially continuous" in length (see col. 8 ln. 17-45 of Prevorsek et al.) and to the degree that applicants' Species II band are "substantially seamless" the bands of Lewis are considered to be "substantially seamless". Prevorsek et al. discloses that the fibers have a tenacity of at least 15 grams/denier and a tensile modulus of at least 300 grams/denier (see col. 7 ln. 14-22). In col. 7 ln. 62 - col. 8 ln. 16, Prevorsek et al. discloses that aramid fibers and glass fibers may be used to form the fibrous layers, and in col. 7 ln. 10-11 Prevorsek et al. discloses that polyolefin fibers may be used in the fibrous layer. The claimed matrix is disclosed in col. 8 ln. 17 - col. 9 ln. 38 of Prevorsek et al., in particular on line 3 of col. 9, a polyurethane matrix is disclosed.

The modified container of Lewis does not specifically disclose the specific percent of the fibers which are considered to "substantially continuous". It would have been obvious to one having ordinary skill in the art at the time the invention was made to make a certain percent of the fibers substantially continuous depending on the what strength and rigidity is desirable for the container and, since the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984)

The modified container of Lewis is polygonal in cross section and would inherently deform if the blast is great enough. The container deformation is dependant on the strength of the blast. Regarding


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claims 74-76, the inner and intermediate band of the modified Lewis invention comprise the container and the outer band is the strip.

Conclusion

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Kopsidas whose telephone number is (703) 308-1606.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1148. The fax number for this group is (703) 305-3579.


Niki M. Kopsidas/nmk
Patent Examiner
February 18, 1997


ALLAN N. SHOAP
SUPERVISORY PATENT EXAMINER
GROUP 3200